

Department of Planning and Zoning

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Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin *SG*
DATE: June 17, 2014
RE: 14-1109VR; 465 Appletree Point Road

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: WRL Ward: 4

Owner/Representative: David & Brianne Chase / Al Senecal

Request: Variance from front yard and waterfront setbacks on existing vacant lot.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance from applicable front yard and waterfront setbacks on an existing vacant lot. The subject property was created in 2004 under the previous zoning and subdivision regulations. These previous regulations contained standards different from those in effect today. The front yard setback at the time was 15', and the waterfront setback was 50'. Today's front yard setback is based on the average of neighboring properties (in this case 90' +/- 5'), and the waterfront setback is 75'. The requested variance requests a 25' front yard setback (~17' from the road's edge) and a 20' waterfront setback.

No development is included in this application. The variance is sought as a precursor to a potential single family home to be filed under separate permit if the variance is granted.

Previous zoning actions for this property are as follows:

- 7/26/04, Approval of 2-lot subdivision

Recommendation: Variance approval of front yard setback requirement as per, and subject to, the following findings and conditions:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such

conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The lot is not especially small at 13,240 sf, nor is it particularly irregular. The problem stems entirely from the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based on the average of 395 Appletree Point Rd and 451 Appletree Point Rd to the east. The two lots to the west are vacant. The application indicates an applicable front yard setback of 100'. Staff measurements show an applicable setback of 90', +/- 5' ($150' + 29' / 2 = 89.5'$). This discrepancy needs to be resolved. In any event, a 90' front yard setback puts any potential construction in the lake. Compliance with the front yard setback is impossible. **(Affirmative finding as conditioned)**

The requested variance from the 75' waterfront setback is unnecessary. While the 75' waterfront setback overlaps substantially with the 90' front yard setback, the waterfront setback is considerably more flexible. Sec. 4.4.5, *Residential Districts*, (d) 1, B, *Encroachments into the Waterfront Setback*, (ii) allows the waterfront setback to be reduced to the average setback of existing structures within 150' of the subject lot. In this case, the abutting property at 451 Appletree Point Rd is within 150' and contains an existing camp structure at just 17' from the waterfront. The requested 20' waterfront setback is compliant with this standard. No variance is needed. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As noted above, a 90' front yard setback places any would-be construction in the lake. Compliance with the front yard setback is impossible. **(Affirmative finding)**

As noted above, no variance from the waterfront setback is necessary. The provisions of Sec. 4.4.5 allow encroachments up to 17' in this case. The requested 20' waterfront setback requires no variance. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to the front yard setback is related to the pre-existing lot and the setbacks in effect at the time it was created. It is not a lot newly created by the applicant under the current regulations. **(Affirmative finding)**

There is no unnecessary hardship relative to the waterfront setback. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance would enable the construction of a single family home on a ~1/4 acre lot. Such is the predominant development pattern in this area of the city. **(Affirmative finding)**

The variance from the waterfront setback is unnecessary as noted before. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested 25' front yard setback allows for a reasonable building envelope and continues to reflect the neighborhood pattern of homes set relatively far back from the road and relatively close to the shoreline. **(Affirmative finding)**

No variance from the waterfront setback is necessary. **(Adverse finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

If granted, the variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

If granted, the variance from the waterfront setback would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The requested building envelope complies with the encroachment provisions for the waterfront setback. As such, no variance is needed. **(Adverse finding)**

II. Conditions of Approval

1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*. No variance is granted for the waterfront setback.
2. Prior to permit application for construction on the property, the front yard setback shall be verified, subject to staff review and approval.
3. No development is included in this approval. All development is subject to a separate zoning permit.
4. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

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164 Main Street, Suite 201
Burlington, VT 05446
Telephone 878-9375, Fax 878-9618
email@krebsandlansing.com

May 14, 2014

Scott Gustin
Burlington Dept. of Planning & Zoning
149 Church Street
Burlington, VT 05401

RE: Variance Request -451 Appletree Point
Lot 2

Dear Scott,

Please find the enclosed Zoning Permit application and plan for Lot 2 of the property located at 451 Appletree Point in Burlington. This property is owned by David and Brianne Chase and is part of a subdivision filed on September 8, 2004. In accordance with the "Variance Request Checklist" we offer the following in addition to our application:

Description of the property to which the variance would apply:

The existing lot is approximately 0.3 acres and currently serves an existing single family home with a garage and boat house. The lot is bounded by the private portion of Appletree Point Road to the north, Lake Champlain to the south, and undeveloped or residential properties to the east and west. Topography is generally flat, except for a 7'-8' high bank along the lakeshore to the south. The property is located in the Waterfront Residential - Low Density District.

Reference to the applicable regulatory provisions:

The existing lot is subject to the regulatory provisions of the *City of Burlington Comprehensive Development Ordinance*, and specifically *Article 4: Zoning Maps and Districts, Sec. 4.4.5 Residential Districts*. Waterfront Residential - Low Density District.

Relief requested by the applicant:

The applicant requests relief from the front yard setback and lakeshore setback requirements as outlined in the Ordinance. This relief will enable the applicant to construct a new single family residence on the parcel.

Information and narrative addressing the grounds why such requested relief is believed proper under the variance criteria pursuant to Sec. 12.1.1, Variances:

The existing lot is not developable in accordance with the setbacks outlined in the *Comprehensive Development Ordinance*. The front yard setback and shoreline setback effectively overlap, leaving the lot with no complying building envelope. This hardship is a function of the existing private road accessing the lot and Lake Champlain, and thus has not been created by the applicant.

Scott Gustin
451 Appletree Point – Lot 2
May 14, 2014

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The proposed house site and size is in scale with other existing houses on Appletree Point, and will not alter the essential character of the neighborhood or district. The requested setbacks provide for a front yard and setback from the shoreline, while still allowing for a reasonable building envelope on the property. The variance requested will not result in either the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

DEPARTMENT OF
PLANNING & ZONING

If you have any questions or comments regarding this application please feel free to contact us at your earliest convenience.

Best regards,

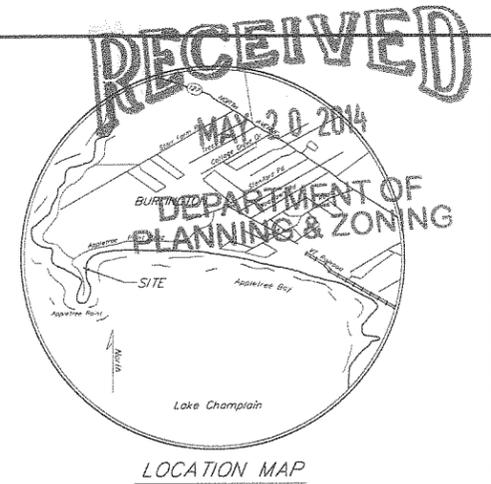


Scott Homsted, P.E. 7893

Enclosures

CC: Al Senecal

14132\Gustin Letter variance.doc



LOCATION MAP

Surveyor's Certification

It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property by me or persons under my supervision; that all monuments shown hereon actually exist or are marked as "future" and their location, size type and materials are correctly shown.

Ion A. Jewee L.L.S. #330

Engineer's Certification

It is hereby certified that, to the best of my knowledge, this plat fully complies with all engineering requirements set forth in the subdivision regulations of the City of Burlington and all other published engineering requirements of Burlington, Vermont, except as noted in a letter to Steve Gooding dated:

Ion A. Jewee P.E. #7200

Certification of Fire Marshal as follows:

1. _____, Fire Marshal, do hereby certify that the subject plot has been examined by me and found to comply with the fire prevention requirements set forth in this chapter governing plots of subdivided lots adopted by the City Council with the following exceptions: Existing & proposed residences shall be equipped with a residential sprinkler system that meets NFPA 13R standard.

City Fire Marshal

2. _____, Superintendent of Parks do hereby certify that the subject plot has been examined by me and found to comply with the street planting requirements and park area requirements set forth in the regulations governing plots of subdivided lots adopted by the City Council with the following exceptions:

City Superintendent of Parks

Approved by resolution of the City of Burlington Development Review Board on the _____ day of _____, 2014. Subject to all requirements and conditions of Chapter 28 entitled Subdivision Regulations of the Burlington, Vermont Code of Ordinances, signed this _____ day of _____, 2014 by _____

Witness _____ Chairman

3. _____, City Engineer, do hereby certify that the subject plot has been examined by me and found to comply with the engineering requirements set forth in the regulations governing plots of subdivided lots adopted by the City Council, with the following exceptions:

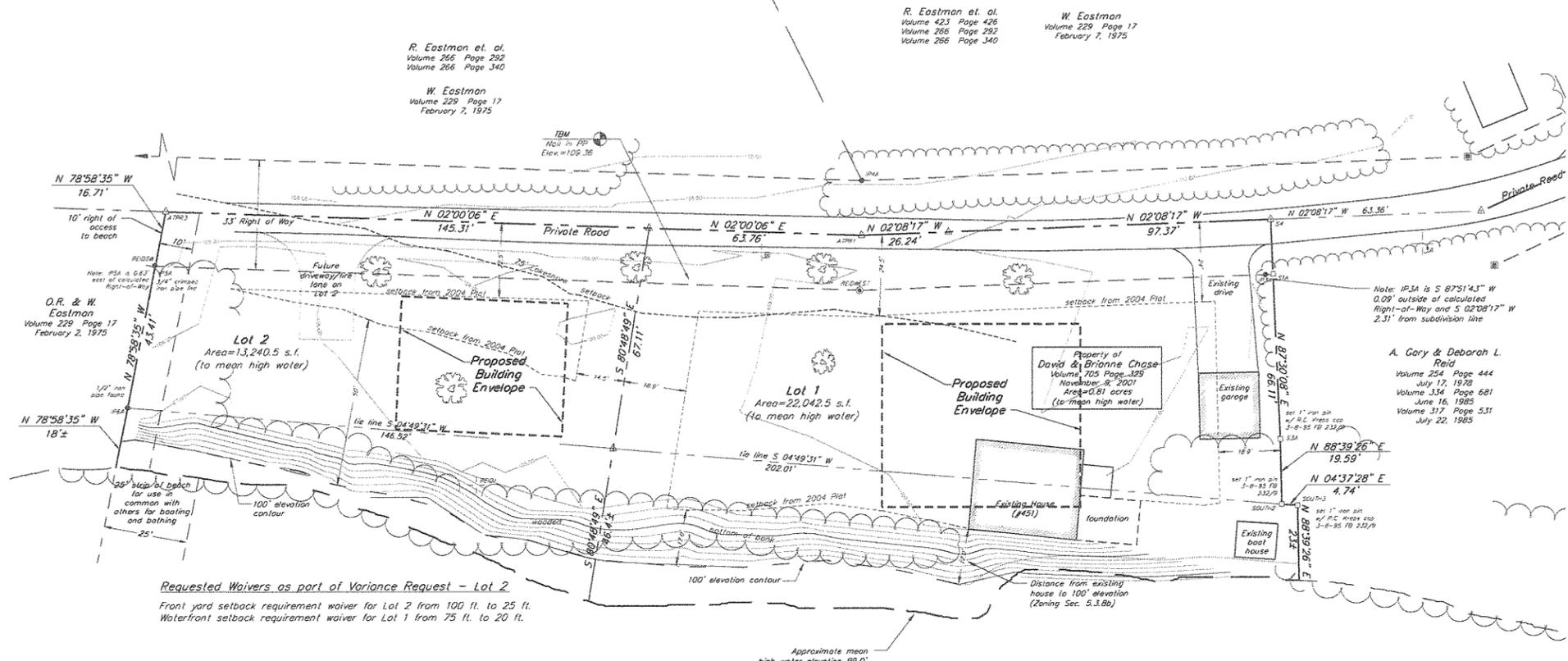
City Engineer

The Owner of the land shown on this plat and whose name is subscribed hereto, in person or through a duly authorized agent, certifies that this plat was made from an actual survey, and that all taxes or other assessments now due on this land have been paid.

Agent _____ Owner _____

Date _____ Date _____

May 13, 2014	proposed building envelopes	swb	5/13/14
Date revised	Description	Checked	Date
Surveyed	MRT/DJS	Final Plat Property of David S. & Brianne E. Chase	
Drawn	FMP		
Checked			
Date	March 4, 2014		
Project	01203	#451 Appletree Point Road	Burlington, Vermont
KREBS & LANSING Consulting Engineers, Inc.			1
164 Main Street, Colchester, Vermont 05446			Fee Book 185 Case# 2004-046



Requested Waivers as part of Variance Request - Lot 2
Front yard setback requirement waiver for Lot 2 from 100 ft. to 25 ft.
Waterfront setback requirement waiver for Lot 1 from 75 ft. to 20 ft.

Requested Waivers as part of Variance Request - Lot 1
Front yard setback requirement waiver for Lot 1 from 100 ft. to 25 ft.
Waterfront setback requirement waiver for Lot 1 from 75 ft. to 18 ft.

Survey Notes:

- All bearings are calculated and referenced to magnetic north. Magnetic north is based on a survey plat entitled, Boundary Survey, Strathmore of Appletree Point, Krebs & Lansing, Job No. 78122. Astronomic north is 15°23'43" east of magnetic north as determined from a solar observation taken at ROWPCN backsighting Point 3 on September 18, 1991.
- A closed traverse was completed in September 1991 using a theodolite (WILD T-2 S/N 286841), and electronic distance meter (AGA Geodimeter 112 S/N 23164) and a steel tape.
- The plat of survey is for the sole use of David & Brianne Chase, and use by other property owners, private or municipal, is specifically unauthorized.
- Any boundary determination, based on deeds or documents recorded in the public records by which title or rights were conveyed to David & Brianne Chase or rights or title in lands of David & Brianne Chase were otherwise delineated, is subject to the accuracy and legality of those deeds or documents. Where those deeds or documents are improperly executed as a matter of law or contain errors or omissions in fact, or contain or are based upon erroneous conclusions of law, then the indicated boundaries may not be valid.
- In addition to this plat of survey, keys to the title of the lands of David & Brianne Chase were prepared. These documents include chains of title for David & Brianne Chase and adjacent property owners as well as a Surveyor's Report delineating the logic, analysis and decision making process for boundary determination. The Surveyor's Report is part of this survey.

Deed References

Grantor	Grantee	Volume	Page	Recording Date
Susan Shepherd	to David S. & Brianne E. Chase	705	329	November 11, 2001
A. Gary and Deborah L. Reid	to Susan Shepherd	669	144	January 25, 2001
Andrew Michael Shepherd	to Susan Shepherd	669	140	January 17, 2001
A. Gary and Deborah L. Reid	to Andrew M. & Susan Reid Shepherd	519	405	December 28, 1994
A. Gary and Deborah L. Reid	to Andrew M. & Susan Reid Shepherd	499	255	December 29, 1993
Oliver R. Eastman, et. al.	to A. Gary and Deborah L. Reid	334	681	June 16, 1986
Elmer E. Reid	to A. Gary and Deborah L. Reid	317	531	July 22, 1985

Planning and Zoning Information

Owner/Applicant:
David S. & Brianne E. Chase
4254 Spear Street
Snelburne, VT 05482

Area:
0.81 acres (to mean high water elevation - 99')

Zoned:
Waterfront Residential (WRL)
Tax Map ID: 030-3-006-002
The proposed subdivision will be served by municipal water and sewer.

Existing Lot Coverage

Buildings = 1,708 s.f.
 $\frac{1,708 \pm f}{35,263 \pm f} = 4.8\%$ of total lot area

Roads/Driveways = 2,536 s.f.
 $\frac{2,536 \pm f}{35,263 \pm f} = 7.2\%$ of total lot area

Total Coverage = $\frac{1,708 + 2,536}{35,263 \pm f} = 12.0\%$ of total lot area

Proposed Lot Coverage

Lot 1 (Estimated)

Buildings = 3,300 s.f.
 $\frac{3,300 \pm f}{22,042 \pm f} = 14.9\%$ of Lot 1

Roads/Driveways = 1,356 s.f.
 $\frac{1,356 \pm f}{22,042 \pm f} = 6.2\%$ of Lot 1

Total Coverage = $\frac{3,300 + 1,356}{22,042 \pm f} = 21.2\%$ of Lot 1

Lot 2 (Estimated)

Buildings = 2,000 s.f.
 $\frac{2,000 \pm f}{13,240 \pm f} = 15.1\%$ of Lot 2

Roads/Driveways = 1,350 s.f.
 $\frac{1,350 \pm f}{13,240 \pm f} = 10.2\%$ of Lot 2

Total Coverage = $\frac{2,000 + 1,350}{13,240 \pm f} = 25.3\%$ of Lot 2

Boundary Notes

- The original boundary of the property conveyed to David & Brianne Chase by Susan Reid Shepherd was surveyed by Krebs & Lansing Consulting Engineers. See Map Reference #1.

Map References

- Plan entitled "Subdivision Plat, A. Gary & Deborah L. Reid", by Krebs & Lansing Consulting Engineers, Project #91124, dated December 9, 1991.

Legend

- Property line / right of way
- High water elevation 99.0
- Bottom of lake shore bank
- Edge of woods
- Traverse point
- Iron pipe or rebar recovered
- 3/4" iron pipe found
- Concrete monument recovered
- 1" iron pin set
- Calculated point



Magnetic North 1975